

PC RESOLUTION NO. 16-017

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING APPROVAL OF A SITE DEVELOPMENT PERMIT (P-SD15-0013), CONDITIONAL USE PERMIT (P-UP15-0018), TENTATIVE SUBDIVISION MAP (P-MT15-0012), AND ENVIRONMENTAL ASSESSMENT (P-EA16-0004) TO SUBDIVIDE THE PROPERTY, DEMOLISH EXISTING STRUCTURES, CONSTRUCTION OF FIVE INDUSTRIAL BUILDINGS (BUILDING A – 314,195 SQ. FT; BUILDING B – 136,785 SQ.FT; BUILDING C – 122,361 SQ.FT; BUILDING D – 131,482 SQ.FT; BUILDING E – 99,653 SQ.FT) TOTALING 804,476 SQUARE FEET AND ONE 6,026 SQUARE FOOT RESTAURANT BUILDING ON A 44.17 ACRE SITE., AT 625 NORTH MCCARTHY BOULEVARD, APN'S 022-29-036 AND 022-29-037

WHEREAS, a Site Development Permit, Conditional Use Permit, Tentative Subdivision Map, and Environmental Assessment application (P-SD15-0013; P-UP15-0018; P-MT15-0012, P-EA16-0004) was filed by McCarthy Ranch, LLC for 625 North McCarthy Boulevard which includes five industrial buildings (Building A - 314,195 sq. ft.; Building B – 136,785 sq. ft.; Building C- 122,361 sq. ft.; Building D – 131,482 sq. ft.; Building E – 99,653 sq. ft.) of 804,476 square foot and one restaurant building 6,026 square foot on a 44.17 acre site, with single story, industrial buildings 49' 6" feet at the maximum height and one restaurant 18 feet in height with new access points, outdoor vehicle circulation areas, parking for vehicles, truck and trailers, pedestrian trails, and landscaping. (APN's 022-29-036 and 022-29-037); and

WHEREAS, the application includes a request to allow shared parking because the project includes a combination of industrial and restaurant uses. The project would provide 1,032 parking spaces, which is sufficient for the proposed project; and

WHEREAS, the City of Milpitas determined that the project was subject to California Environmental Quality Act (CEQA) and The McCarthy Ranch Mixed Use Project was approved in 2009 pursuant to a Certified EIR (SC#2008092082) pursuant to Section 15183. An Initial Study has been prepared to consider whether any new environmental effects not identified in the 2009 EIR might be created by construction and operation of the McCarthy Creekside Project on Site A only (CEQA Guidelines Section 15152, 15153). The initial study was prepared pursuant to CEQA sections 15183 (Projects Consistent with a Community Plan or Zoning) and 15063 (Initial Study). The Initial Study concludes that the project would have no new Potentially Significant Impacts, all impacts were adequately evaluated in the certified McCarthy Ranch Mixed Use Project EIR, and no additional environmental analysis is necessary.; and

WHEREAS, on March 7th, 2009 the Planning Commission held a duly noticed public hearing on the Environmental Impact Report, and considered evidence presented by City staff, the applicant, and other interested parties.

WHEREAS, the Environmental Impact Report identifies mitigation measures applicable to the project, therefore a Mitigation Monitoring and Reporting Program (MMRP) must be adopted to mitigate or avoid significant effects of the project on the environment and ensure compliance during project implementation; and

WHEREAS, a MMRP has been prepared and attached as required by CEQA (Exhibit C, incorporated by reference).

WHEREAS, a duly-noticed public hearing was held by the City of Milpitas Planning Commission on May 11th, 2016 on the subject application, at which time all those in attendance were given the opportunity to speak on this proposal; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision.

NOW, THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project's environmental impacts are addressed in the project's Final EIR. All applicable mitigation measures identified in the Final EIR will apply to the project and have been integrated to the extent possible in the project's conditions of approval in Exhibit 1.

Section 3: In accordance with the City of Milpitas Municipal Code Section XI-10-57.03(F), Site Development Permit (General Findings), the Planning Commission further finds that:

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

As shown on the project plans, the architectural features including contemporary fenestration, elevational accents, and building design will be integrated across the site maintaining a good level of design quality. Development on nearby properties within McCarthy Ranch exhibit contemporary architectural features such as glass, steel, and plaster finishes with changes in color and variations in the horizontal planes of the buildings.

2. The project is consistent with the Milpitas Zoning Ordinance.

The project's Floor Area Ratio is within the required thresholds of the underlying zoning district. The project is consistent with respect to development standards for the Industrial Park zoning district in terms of height, setbacks, and the City's parking ordinance.

3. The project is consistent with the Milpitas General Plan.

The proposed project is consistent with the underlying Industrial Park designation in that warehouse, manufacturing and offices are proposed. The project will encourage the economic pursuits of the City, providing opportunities and foster community pride and growth through development.

The project is consistent with Policies:

- i. 2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that is appropriate for that use.*
 - ii. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes large commercial spaces which are able to expand employment within the City.*
 - iii. 2.a-I-17 Foster community pride and growth through beautification of existing and future development. The project includes the demolition of older underused agricultural buildings and the construction of a contemporary designed commercial facility.*
4. The height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated.

The height maximum for this location in the zoning ordinance is 35 feet. The City's Ordinance allows the height to be above this maximum if Planning Commission are satisfied the additional height will not be detrimental to light, air or privacy. Given the location and surroundings of the project site, the additional height is appropriate and there will be no detrimental effects on surrounding development or on public spaces.

Section 4: In accordance with the Municipal Code Section XI-10-57.03(F), Site Development Permit (Signs Findings), the Planning Commission further finds that:

1. All elements of signs, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan.

The project's proposed signs are in conformance with the design guidelines of the Sign Ordinance. The signs include a combination of sizes and locations on the proposed buildings.

2. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves.

The proposed signs as shown on the project plans provide compatibility of size, location and continuity with other signs and buildings on-site. The signs include a combination of monument, wall and main building signs in a consistent and cohesive manner.

3. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed.

The proposed signs as shown on the project plans provide visibility and legibility and provide the appropriate relationship of scale and height to the building.

4. The design and materials of the sign provide a contrast between the background and letters.

The proposed design and materials of the signs as depicted in the project plans provide contrast between the background and letters.

Section 5: In accordance with the Municipal Code Section XI-1-4.03, Tentative Map (Tentative Map Findings), the Planning Commission further finds that:

1. The tentative map conforms to the Milpitas Subdivision Ordinance.

The proposed project was submitted with the appropriate information (acreage, lot dimensions, etc. required in Section XI-1-4.02, form of Tentative Map, of the Municipal Code.

2. The Tentative Map conforms to the Milpitas General Plan.

The proposed project is consistent with the underlying Industrial designation in that warehousing, manufacturing and offices are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.41 in line with the General Plan.

The project is consistent with Policies:

- i. 2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance. *The project creates new commercial opportunities at a location that includes an underutilized agricultural format.*
- ii. 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. *The project includes commercial space that would expand employment.*
- iii. 2.a-I-17 Foster community pride and growth through beautification of existing and future development. *The project includes the demolition of older agricultural buildings and the construction of a contemporary designed commercial facility.*

Section 6: In accordance with the Municipal Code Section XI-10-57.04(F), Conditional Use Permit (Conditional Use Permit Findings), the Planning Commission further finds that:

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*
 - a. *With respect to the shared parking: The peak parking for the restaurant is consistent with the surrounding number of available parking spaces provided to the sites industrial uses. Sufficient parking spaces are available for the restaurant to limit the number of parking spaces allocated to in and thus reducing the need for underutilized parking spaces and overdevelopment of the site. This is intended to curb potential parking demand concerns;*
 - b. *With respect to restaurants, the position, size and proposed use will comply with City of Milpitas requirement to retain high levels of public health, safety and general welfare for the surrounding community.*
2. *The proposed use is consistent with the Milpitas General Plan.*

The proposed project is consistent with the underlying Industrial Park designation in that warehousing, manufacturing and offices are the main uses and the restaurant is a supporting and ancillary proposed use. The General Plan is supporting of this type of arrangement.

The project is consistent with Policies:

- a. *2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities which supports the proposed larger commercial format.*
 - b. *2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The restaurant represents a small commercial space that would cater to the surrounding businesses and employees.*
3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The restaurant includes a shared parking analysis to comply with the City's parking regulations. Conditions of approval for the restaurant use ensures safety and public welfare are maintained.

The project includes a shared parking analysis to comply with the City's parking regulations. The proposed arrangement provides 1,032 surface parking spaces. The proposed project will eliminate the need for 58 surface parking spaces, which would otherwise be required for the proposed restaurant. The project would provide sufficient amounts of parking for the proposed uses.

Section 7: The Planning Commission of the City of Milpitas hereby recommends the City Council approve Site Development Permit, Tentative Map and Conditional Use Permit and certification of the Initial Study in line with the project's Final EIR, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1, the FEIR resolution attached hereto as Exhibit 2.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 11th, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 11th, 2016, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Garry Barbadillo				
Demetress Morris				

EXHIBIT 1

CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. P-SD15-0013; CONDITIONAL USE PERMIT NO.
P-UP15-0018; TENTATIVE SUBDIVISION MAP NO. P-MT15-0012 AND
ENVIRONMENTAL ASSESSMENT NO. P-EA16-0004

625 NORTH MCCARTHY BOULEVARD, (APN'S 022-29-036 AND 022-29-037)

GENERAL CONDITIONS

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Development Permit NO. P-SD15-0013; Conditional Use Permit NO. P-UP15-0018; and Tentative Subdivision Map NO. P-MT15-0012 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. (P)
2. The Permittee shall develop the approved project in conformance with the approved plans (dated April 20, 2016), sample color and materials board approved by the City Council, in accordance with these Conditions of Approval. (P)
3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. (ALL)
6. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the term of which may be extended upon approval by the City or the filing of a final map, then the term of the permits shall coincide with the life of the map. Pursuant to Section XI-10-

64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined when the project:

- a. Completes a foundation associated with the project; or
- b. Dedicates any land or easement as required from the zoning action; or
- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

7. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
8. Project Job Account. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. **(E)**.
9. Indemnification. The project applicant, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of DEVELOPMENT PERMIT NO. P-SD15-0013; CONDITIONAL USE PERMIT NO. P-UP15-0018; AND TENTATIVE SUBDIVISION MAP NO. P-MT15-0012, including any environmental determination made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. The applicant shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify the project applicant of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify the project applicant, or if City fails to engage in reasonable efforts to cooperate in the defense, then the project applicant's indemnification obligations as set forth in this condition of approval shall thereafter terminate. The project applicant shall not be required to pay or perform any settlement unless the settlement is approved by the project applicant. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to DEVELOPMENT PERMIT NO. P-SD15-0013; CONDITIONAL USE PERMIT NO. P-UP15-0018; AND TENTATIVE

SUBDIVISION MAP NO. P-MT15-0012, and the balance of the Permit shall be unaffected by said Government Code section. **(CA)**

10. A 15-foot setback must be maintained along the northwest property line, identified on Sheet LP of McCarthy Creekside Plan, dated April 20, 2016 as “SCVWD Levee Buffer Line”. No vegetation, utilities, or structures are to be allowed in such zone. **(P)**
11. Compliance with Fire Department and CA Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the CA Fire Code as adopted by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. **(F)**
12. Fire Department apparatus and staff access shall be provided to all buildings and site. Detailed review will be done during construction permit process. CFC Section 503 **(F)**
 - a. A Minimum of two independent and approved (approved by the Fire Code Official) means of fire apparatus access shall be provided. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m²) shall be provided with at least two means of fire apparatus access for each structure. 2012 International Fire Code, Section D104.1, adopted and amended by MMC Section V-300-2.154
 - b. Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (centre). California Fire Code Section 503
 - c. Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105, adopted and amended by Milpitas Municipal Code.

Exception granted for 24 feet fire access at front aisle parking drives (parallel to McCarthy Boulevard.)

- d. Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided. The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.
- e. Fire access roads shall be paved (concrete and/or asphalt cement, no other material is accepted). Fire apparatus access roads/lanes and emergency vehicle roads shall

be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division if specifications are needed. CFC Section 503.2.3

- f. Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4

PUBLIC ART

- 13. Prior to the issuance of a building permit, Permittee shall submit proof of meeting the Public Art Fund requirement under Section XI-10-14. Permittee shall submit proof that ½ of one percent of the Building Development costs for the acquisition and installation of Publically Accessible Art has been met. **(P)**

SIGN PROGRAM

- 14. All future tenant signs shall meet the standards of the Sign Program or shall be reviewed and approved by the Building and Planning Departments prior to installation. **(P)**

ENGINEERING

- 15. A soil report shall be provided when applying for grading, site improvement and building permit. **(E)**
- 16. Paving of parking lot shall comply with 2014 MMC Section II-13-18. **(E)**
- 17. All non-structural concrete flat work shall be as per 2014 Milpitas Municipal Code, section II-13-17.05. **(E)**
- 18. Erosion control plan shall be submitted when applying for grading permit as per 2014 Milpitas Municipal Code sec. II-13-10. **(E)**
- 19. Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. **(E)**
- 20. Developer shall include interim erosion control provisions and schedules on the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season as per 2014 Milpitas Municipal Code section II-13-11. **(E)**
- 21. Design Standards: All public improvements shall be designed and constructed in accordance with current Milpitas design Guidelines, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>), standard drawings and specifications, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps->

specifications/) and Americans with Disabilities Act (ADA) requirements where applicable. **(E)**

22. Encroachment Permit: Prior to any work in the public right-of-way and/or public easement, obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department. **(E)**

The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met.

23. Solid Waste and Recycling Handling Plan: Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. **(E)**
24. Stormwater Control Plan: Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the Municipal Regional Stormwater NPDES Permit No. CA S612008, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department. **(E)**
25. Photometric Analysis: Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along McCarthy Boulevard that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines. **(E)**
26. Recycle Water Cross-Connection Specialist: In order to comply with the California Code of Regulations Title 17 and 22, and for timely plan approval by the California State Water Resources Control Board/Division of Drinking Water as well as by the South Bay Water Recycling, Permittee should hire a certified cross-connection specialist for their consultation of irrigation water system design and construction phasing. The name and contact information of the certified cross-connection specialist shall be provided on all submittal plans. **(E)**
27. Submittal Requirements: Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal. **(E)**
28. Project Job Account/Fee Deposit: Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer. **(E)**

29. Santa Clara Valley Water District (SCVWD) Approval: Permittee shall obtain approval and permit from the SCVWD for any improvements within the 15-foot wide vegetation/structure free/levee buffer zone. Permittee shall comply with the “Guidelines and Standards for Land Use Near Streams” developed by the Water Resources Protection Collaborative for on-site planting design and submit landscape plans to the SCVWD for their review and approval. Permittee shall also abandon existing private well in accordance with SCVWD’s permit requirement. (E)
30. Modifications: The Site Development Plan dated April 20, 2016 is subject to change during the plan check stage based upon City’s previous comments and conditions stated herein. (E)
31. Final Map Recordation: Permittee shall record the final map. (E)
32. Underground Existing Overhead: The existing overhead lines shall be underground and the associated 10’ PG&E pole line easement shall be quitclaimed prior to building permit issuance for Building A/D/E on Lot 1/5/6, unless otherwise approved by PG&E. (E)
33. Quitclaim Existing Easement: The existing pedestrian ingress/egress shall be quitclaimed prior to building permit issuance for Building E on Lot 6, if not quitclaimed as part of the final map. (E)
34. Sanitary Sewer Calculations: Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral. (E)
35. Storm Drain Design: Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department. (E)
36. SWCP O&M: Permittee shall incorporate design details into applicable construction plans in accordance with City approved SWCP. Permittee shall execute and record an Operation and Maintenance (O&M) Plan associated with the SWCP, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department. The O&M Plan shall describe operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control). The O&M Plan shall include the Permittee’s signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (E)
37. Domestic Water and Fire Service Calculations: Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. (E)

38. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply. (E)
39. Recycle Water Approval: Permittee shall use recycled water for landscape irrigation purpose, except for the interior courtyard/podium areas within the building footprint where the potable water shall be used for irrigation. Permittee shall comply with California Code of Regulations (CCR), Title 22, Division 4, Chapter 3, titled "*Water Recycling Criteria*", CCR, Title 17, Division 1, Chapter 5, Subchapter 1 titled "*Drinking Water Supply*" and all other recycled water regulations as listed under the publication titled "*CALIFORNIA DEPARTMENT OF PUBLIC HEALTH REGULATIONS RELATED TO RECYCLED WATER JUNE 18, 2014*". Permittee shall obtain approval from the California State Water Resources Control Board/Division of Drinking Water, South Bay Water Recycling and the City for recycled water design, including but not limited to on-site irrigation design, based upon South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. All landscape plants shall be compatible with recycled water. (E)
40. Water Efficient Landscapes: Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service & irrigation service and providing applicable landscape documentation package. (E)
41. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system. (E)
42. Solid Waste and Recycling Facility Design: Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure location and size, staging area, storage area, etc. (E)
 - a) Recycling Report Prior to Demolition Permit Issuance: Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities: What materials will be salvaged.
 - b) How materials will be processed during demolition.
 - c) Intended locations or businesses for reuse or recycling.
 - d) Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
 - e) Applicant/Contractor shall make every effort to salvage materials for reuse and recycling.

43. Recycling Report Prior to Building Permit Issuance: Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of “end dumps.” Actual reuse, recycling and disposal tonnage amounts (and estimates for “end dumps”) shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department. **(E)**
44. Grease Interceptor: Provide grease interceptors for building with food service. Contact SJ/SC WPCP Senior Source Control Inspector at (408)277-3897 for sizing and location requirements for grease interceptor(s). No grease interceptor(s) shall be located in any public right-of-way or public easement areas. **(E)**
45. Monument Signage: All monument signs shall not be located within any easements and shall be in compliance with City Standard Detail No. 405 for Corner Sight Distance at Intersections and Driveways. **(E)**

The following conditions shall be addressed during the final map plan check process and shall be met **prior to** final map approval/recordation.

46. Easements on the Final Map: Permittee shall depict all existing easements to remain based upon current preliminary title report and depict new easements on the final map. **(E)**
47. Dedication on the Final Map: Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project. **(E)**
48. Abandonment/Quitclaim Easements: Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project. **(E)**
49. Private Easements: Permittee shall reserve private easements as needed, such as cross-lot private utilities and reciprocal access and parking. **(E)**
50. Utility Company Approval: Permittee shall obtain approval letters from utility companies, such as PG&E, AT&T and Comcast/AT&T Broadband, for abandonment of existing and dedication of new PSUEs. **(E)**
51. Demolition of Existing Building: Permittee shall demolish existing buildings/facilities that are in conflict with the new property lines. **(E)**
52. Dedication to SCVWD: Concurrent with the final map recordation, Permittee shall record a separate instrument for offer of dedication of a 15-foot wide vegetation/structure free/levee buffer zone as required by the SCVWD and to be accepted by the SCVWD. **(E)**

53. Concurrent Off-site Plan Reviews: Permittee shall submit separate off-site improvement plans for City's review and ready to be approved by the Engineering Department. **(E)**
54. Subdivision Improvement Agreement and Securities: Permittee shall execute a Subdivision Improvement Agreement (SIA) and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the SIA (such as certificate of insurance). **(E)**
55. Development Fees: Permittee shall pay the following development fees based upon current fee rate and those fee rates are subject to change. The exact fee amount would be determined at the time of the fee payment. **(E)**
 - a) Storm water connection fee at \$21,562/acre for commercial/industrial.
 - b) Water connection fee at \$5.97/gpd for non-residential, based upon increased water usage.
 - c) Sewer connection fee at \$8.52/gpd for non-residential, based upon increased average wastewater flow.
 - d) Treatment plant fee pursuant to Milpitas Municipal Code, Title VIII, Chapter 2, Section 7.04.
 - e) Calaveras Boulevard widening traffic impact fee pursuant to City Resolution No. 7894.
 - f) 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer.

56. Development Fees: Specific Improvements: In addition to standard public improvements required under Milpitas Municipal Code (MMC) Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit. **(E)**
 - a) Installation of separate water meter and utility service laterals (potable water, fire service and sanitary sewer) for each of the building/lot, respectively, except irrigation system.
 - b) Installation of lot-independent grading and storm drain system (without cross-lot drainage), unless otherwise approved by the City Engineer.
 - c) Installation of radio-transmitted water meters with a meter antenna, any repeaters or transmitters as needed with dedicated power supplies at no cost to the City at locations acceptable to the City to ensure accurate and timely reception of meter readings. Permittee shall execute a recorded instrument providing dedicated space, access rights and dedicated power supplies to the City for operation/maintenance/repair/replacement of subject radio antenna.
 - d) Provision of pipe assessment report/video footage for the conditions of existing public utility service laterals. Permittee shall replace the existing utility service laterals as determined by the City.

57. Abandonment of Existing City Utilities: Permittee shall cap, abandon or remove any unused existing public utilities based upon City's Abandonment Notes and to the City's satisfaction. (E)
58. Relocation and Adjustment of Existing Public Utilities: Permittee shall relocate and/or adjust existing public utilities as needed that are in conflict with the proposed improvements. (E)
59. Water Service Agreement: Permittee shall complete a water service agreement to obtain water service. (E)

The following conditions shall be complied with at all times **during** the construction phase of the project.

60. On-site Recycle Water Coordination: Permittee's cross-connection specialist shall coordinate the phasing of the construction; facilitate the cross-connection testing in order to minimize the impact for occupied buildings during cross-connection testing; sign-off before the water meter set; coordinate on-site construction inspection; complete the site inspection; fill out required paperwork/questionnaire; and provide them to the City for forwarding to South Bay Water Recycling. (E)
61. Prohibition of Potable Water Usage: Permittee shall use recycled water for construction purpose including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council. (E)
62. Construction Staging and Employee Parking: Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements. (E)

The following conditions shall be met **prior to** first building occupancy on any lot, unless otherwise approved the Director of Engineering/City Engineer.

63. Completion of Public Improvements: Permittee shall complete all public improvements along the frontage of McCarthy Boulevard as part of the phase 1. (E)
64. Landscape Certificate of Substantial Completion: Permittee shall submit a Certificate of Substantial Completion that complies with the MMC Water Efficient Landscapes ordinance for each of the construction phase. (E)
65. Certificate of Cross-Connection: Permittee shall ensure that the cross-connection specialist complete the required recycled water construction inspection checklist, cross connection test results and any special inspection checklist as required by the South Bay Recycling Program <http://www.sanjoseca.gov/index.aspx?NID=1595> and forward them to the City for each of the construction phase. (E)

- 66. Record Drawings: Permittee shall submit record drawings in pdf format for City records. (E)
- 67. PJ Balance: Permittee shall pay for any remaining balance from the Private Job deposit. (E)
- 68. Assessment District: This project is located within the Landscaping and Lighting and Maintenance Assessment District No. 95-1, therefore, is subject to special tax. (E)

Environmental Impact Report (EIR) Mitigation Measures

The following are the applicable mitigation measures from the certified EIR. The following mitigation measures shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

AIR QUALITY

Mitigation Measure AQ-1: BAAQMD Required Dust Control Measures. The construction contractor shall reduce construction-related air pollutant emissions by implementing BAAQMD's basic fugitive dust control measures, including:

- a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b) All haul trucks transporting soil, sand, or other loose material off site shall be covered.
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.
- e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f) A publically visible sign shall be posted with the telephone number and person to contact at the Site Superintendent regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number and Lead Agency contact information shall also be visible to ensure compliance with applicable regulations.

Mitigation Measure AQ-2: BAAQMD Required Basic Exhaust Emissions Reduction Measures. The construction contractor shall implement the following measures during construction to reduce construction-related exhaust emissions:

- a) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- b) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

Mitigation Measure AQ-3: BAAQMD Regulation 8, Rule 3 for Architectural Coatings. Emissions of volatile organic compounds (VOC) due to the use of architectural coatings are regulated by the limits contained in Regulation 8: Organic Compounds, Rule 3: Architectural Coatings (Rule 8-3). The VOC architectural coating limits, which were effective on January 1, 2011, was projected to result in a 32 percent reduction of VOC emissions in the Bay Area associated with architectural coating applications. The project contractor shall use paints and solvents with a VOC content of 100 grams per liter or less for interior and 150 grams per liter or less for exterior surfaces.

Mitigation Measure AQ-4: Implement Enhanced Exhaust Emissions Reduction Measures. The construction contractor shall implement the following measures during construction to further reduce construction-related exhaust emissions:

All off-road equipment greater than 25 horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements:

- 1. Where access to alternative sources of power are available, portable diesel engines shall be prohibited; and
- 2. All off-road equipment shall have:
 - a. Engines that meet or exceed either USEPA or CARB Tier 2 off-road emission standards, and;

Engines that are retrofitted with a CARB Level 2 Verified Diesel Emissions Control Strategy (VDECS). Acceptable options for reducing emissions include the use of late model engines, low-

emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such are available.

BIOLOGICAL RESOURCES

All mitigation measures outlined within the certified EIR within the Mitigation Monitoring and Reporting Program, as identified as Exhibit C within said EIR shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

CULTURAL RESOURCES

All mitigation measures outlined within the certified EIR within the Mitigation Monitoring and Reporting Program, as identified as Exhibit C within said EIR shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

GEOLOGY, SOILS, AND SEISMICITY

All mitigation measures outlined within the certified EIR within the Mitigation Monitoring and Reporting Program, as identified as Exhibit C within said EIR shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

HYDROLOGY AND WATER QUALITY

All mitigation measures outlined within the certified EIR within the Mitigation Monitoring and Reporting Program, as identified as Exhibit C within said EIR shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

NOISE

All mitigation measures outlined within the certified EIR within the Mitigation Monitoring and Reporting Program, as identified as Exhibit C within said EIR shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

UTILITIES AND SERVICE SYSTEMS

All mitigation measures outlined within the certified EIR within the Mitigation Monitoring and Reporting Program, as identified as Exhibit C within said EIR shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-017.

Notes:

(P) = Planning

(B) = Building

(E) = Engineering
 (F) = Fire Prevention
 (PD) = Police

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

 Signature of Permittee